



August 1, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-3352

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150148.

The Texas Department of Criminal Justice (the "department") received written requests from two individuals for records pertaining to the department's Super Intensive Supervision Program and its Global Positioning System, including records pertaining to particular parolees. You state that some responsive information will be made available to the requestors. You contend that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.116, and 552.131 of the Government Code.

Because your claims under section 552.101 are the most inclusive, we will address these arguments first. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Most of the records at issue are held by the department's Board of Pardon and Paroles (the "board") and pertain to the referenced parolees. Section 508.313(2) of the Government Code makes confidential "[a]ll information obtained or maintained" by the department that relates to a "releasee," meaning a person released on parole or to mandatory supervision. Gov't Code § 508.001. After reviewing your arguments and the submitted documents, we conclude that most of the information you submitted to our office is made confidential by section 508.313(2) of the Government Code and that none of the release provisions of that statute apply in this instance. Accordingly, the department must withhold the following

exhibits pursuant to section 552.101 of the Government Code: A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, the "Offender Case Incident Review" information contained in B-1, B-2, B-3, B-4, B-5, C-1, C-2, C-3, C-4, C-5, D-2, D-3, E-1, E-2, E-3, and E-4.¹

However, we conclude that the Administrative Directive PD/AD-3.15.10 contained in Exhibit B-1 does not contain information about a releasee and therefore is not made confidential under section 508.313 of the Government Code. Because you have raised no other applicable exception for this document, we conclude that it must be released in its entirety.

You next contend that Exhibits D-6 and F are protected from public disclosure under section 552.111 of the Government Code as "draft" documents. Section 552.111 excepts from required public disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. The draft of a document that has been released or is intended for release in final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document, and may therefore be withheld under section 552.111 of the Government Code. See Open Records Decision No. 559 (1990).

You have not made clear that the information contained in Exhibits D-6 and F is a working draft that is still subject to comments, opinions, and recommendations by the department. Nor have you indicated that the final versions of these documents will be released to the public. However, we conclude that if the department intends to release, or has already released, the final versions of the draft documents contained in Exhibits D-6 and F, i.e., PD/AD-3.15.1, PD/AD-3.15.2, PD/AD-3.15.3, AND PD/AD-3.15.12, the department may withhold the draft versions of these documents in their entirety pursuant to section 552.111 of the Government Code. Otherwise, the draft documents must be released in their entirety to the requestors, except as discussed below.

You also contend that Exhibits D-6 and F are protected from public disclosure pursuant to section 552.108(b)(1) of the Government Code, which excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." The department is a law-enforcement agency for purposes of section 552.108. Attorney General Opinion MW-381 (1981). To

¹Because we resolve this aspect of your request under section 552.101, we need not otherwise address the applicability of section 552.131 of the Government Code.

prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a law-enforcement agency must do more than merely make a conclusory assertion that releasing the information would unduly interfere with law enforcement; the determination of whether the release of particular records would unduly interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984).

After reviewing Exhibits D-6 and F, we conclude that you have met your burden of demonstrating that the release of portions of these documents would interfere with law enforcement. We have marked the information that the department may withhold pursuant to section 552.108(b)(1).

You characterize the documents you submitted to our office as Exhibit G as "audit working papers" protected from public disclosure under section 552.116 of the Government Code, which provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit *authorized or required by a statute of this state* or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116 (emphasis added). A governmental body that invokes section 552.116 must demonstrate that the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. Here, you have not identified the applicable statute, if any. Thus, you have not demonstrated that the records contained in Exhibit G were prepared or maintained by the department in conducting an audit authorized or required by a statute of this state or the United States. See Gov't Code §§ 552.116(a), (b)(1), (b)(2). Consequently, Exhibit G is not excepted under section 552.116 and therefore must be released.

To summarize, the department must withhold the following exhibits pursuant to section 508.313(2) of the Government Code: A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, the "Offender Case Incident Review" information contained in B-1, B-2, B-3, B-4, B-5, C-1, C-2, C-3, C-4, C-5, D-2, D-3, E-1, E-2, E-3, and E-4. The department may withhold pursuant to section 552.111 the draft documents contained in Exhibits D-6 and F, i.e., PD/AD-3.15.1, PD/AD-3.15.2, PD/AD-3.15.3, AND PD/AD-3.15.12, but only if the department has released or intends to release the final versions of these documents. Otherwise, the department may withhold only the portions of these documents that we have marked as coming within the protection of section 552.108(b)(1). We have also marked other information contained in Exhibit F that the department may withhold pursuant to section 552.108(b)(1). All remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/seg

Ref: ID# 150148

Enc. Submitted documents

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